IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9649 OF 2012

1. Union Of India, Through
Secretary, Dept Of Revenue,
Ministry Of Finance North Block
New Delhi.

2 The Chairman,
Central Board of Direct Taxes
North Block, New Delhi

3 The Secretary,
Department of Expenditure
Ministry of Finance,
North Block New Delhi 110001. … Petitioners.

V/S.

1 Income Tax Gazetted Officer's
Association,
Room No.19, Aaykar Bhavan
Mumbai-20, through Rajesh
Menon, General Secretary of the
Association Representing all officers
Who are members of the recognized
Association of all Promotee officers
Of the Income Tax Department under
the Ministry of Revenue Government
of India.

2 Central Administrative Tribunal
Bombay Bench
Gulistan Buldg No-6, 3rd & 4rd Floor
Prescott Road, Fort, Mumbai-400001.… Respondents.

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Mr. Suresh Kumar a/w. Ms. Mohinee Chougule for the Petitioner.

Mr.Vishal Shirke for the Respondent No.1.

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CORAM: NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.

DATE: 8 December 2023.

ORAL JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner-Union of India has challenged the order passed by the Central Administrative Tribunal dated 17 January 2012 in Original Application No. 86/2008 filed by the Respondent. The Respondent-Original Applicant is an Association of promotee gazetted officers and Inspectors in the Income Tax Department. By the impugned order, the Tribunal has allowed the Original-Application and declared that the decision of the Petitioners-Union of India to give prospective effect to the revised pay scale of Income Tax Officers and Inspectors in the Pay scale of Rs.7450-12000 is illegal and the Respondent-Original Applicants are entitled to have their pay scale fixed with effect from 1 January 1996.

3. On 21 April 2004, the Government of India-Ministry of Finance, Department of Expenditure issued an Office Memorandum for the upgradation of the pay review of the posts, in the Central Board of Direct Taxes under the Department of Revenue. The Memorandum enumerated the post is existing pay scale and revised pay scale. For Income Tax Officers, the existing pay scale of Rs.6500-10500 was revised to Rs.7500-12000. Instructions were accordingly issued to all the Commissioners. The effect was given from the date of the Office Memorandum i.e. 21 April 2004 .

4. On 16 March 2006, the Respondent-Association made a representation for giving effect to the upgradation of the pay scale from 1 January 1996. The Association contended that while granting the date of revised pay scale there has been a pay scale anomaly between the Income Tax Officers and Inspectors and the other Government servants in the Union of India, who are similarly situated. Since the representation, did not yield any result, the Respondent-Association filed the Original Application in Central Administrative Tribunal.

5. In the Original Application, the Respondent-Association prayed that the Office Memorandum dated 21 April 2004 be modified so that it would take effect from 1 January 1996

notionally for fixation purpose and the actual payment be effected from the date of order i.e. 21 April 2004 for arrears of payment of the salary. The Respondent Association contended that the existing anomaly before the Office Memorandum dated 21 April 2004 in the pay scales was removed, however, the effect was given from the date of the Office Memorandum i.e. 21 April 2004 instead of 1 January 1996 as done in the case of other similarly situated Government servants. The Petitioner filed the reply affidavit before the Tribunal and contested the claim of the Respondent- Association.

6. Before the Tribunal, the main argument of the Respondent-Association was on parity. The Respondent-Association placed on record that as regards other departments such as Railway Account Staff, Organized Accounts Cadre, Divisional Accountants, and Geological Survey of India the effect was given to the upgradation of pay scale differently from 1 January 1996 and contended that there was no reason why the members of the Respondent- Association be discriminated. The Petitioner contended that the Tribunal ought not to have entered into the question of parity relying on various decisions of the Hon'ble Supreme Court and stating that the parity would require evaluation of various factors, which lie within the domain of the Government and not the Tribunal.

7. The Tribunal, after analyzing these decisions did not accept that the Tribunal was precluded from entering into the dispute raised by the Respondent-Association. The Tribunal held that the parity in pay scales between the post of the income tax officers comparable posts in the Organized Accounts Cadre and Accounts Department in the Railways as well as Geological Survey of India was already accepted by the Ministry of Finance and, therefore, there was no reason to fix a separate date for giving effect. Accordingly, by the impugned order 17 January 2012, the Tribunal allowed the Original Application fixing date for upgradation as 1 January 1996 instead of the date of the Memorandum.

8. The Writ Petition was filed in the year 2012 challenging the impugned order dated 17 January 2012. The Petition remained pending as the Court had expressed that the Petition would be taken up for final disposal. The Petition came up before us on 20 September 2023 when the learned counsel for Respondent No.1 - Association had taken time to place on record subsequent events which had occurred after the filing of the Petition. Accordingly, an additional affidavit is filed.

9. We have heard Mr. Suresh Kumar learned counsel for the Petitioner, Mr. Vishal Shirke, learned counsel for the Respondent Association.

10. The Tribunal has directed that effect be given to the Office Memorandum dated 21 April 2004 from 1 January 1996 on a notional basis. The Tribunal has observed that this direction is warranted given the stand of the Ministry of Finance itself. The additional affidavit filed by the Respondent- Association has placed on record subsequent events as under :-

> *"4. I further say that the present Writ Petition was filed in this Hon'ble Court on 10.09.2012. During pendency of the present Writ Petition, the order dated 10.12.2012 passed by the Kolkata Bench of the Ld.Tribunal came to be challenged by the Union of India before the Hon'ble Calcutta High Court by filing Writ Petition CT No.21 of 2015. The Hon'ble Calcutta High Court by its judgment and order dated 03.05.2023 disposed off the said Writ Petition by directing the Union of India to constitute a Special Anomaly Committee within 2 months from the date of communication of its order and further directed the committee to decide representations of the Respondents therein within a period of 1 month from the date of constitution of committee and also directed that the committee should communicate its decision within one week therefrom to the respective Respondents. A copy of judgment and order dated 03.05.2023 is annexed hereto and marked as Exhibit-B*
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> *5. In pursuance of the directions of the Calcutta High Court in its judgment and order dated 03.05.2023, the Government of India constituted a Special Anomaly Committee. The Special Anomaly Committee made recommendations as under:-*
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> > *"The committee while taking into*

> *considerations all the points raised by these 13 applicants in their applications and the analysis made at preceding paras of the report is of considered view that there is an anomaly in the date of effectiveness for grant of enhanced pay scale of Rs. 6500-10500 in case of Inspector of Income Tax and Rs. 7500-12000 in case of Income Tax Officer. In some of the cases the enhanced pay scale of granted w.e.f. 01.01.1996 while in case of Income Tax Officer and Inspector of Income Tax it was granted w.e.f. 21.04.2004. This anomaly needs to be redressed in case of these 13 respondents, subject to the approval of the Competent authority."*

6. I further say that the recommendations of the committee received approval from the Competent Authority and were accepted by the Government of India and it has been decided to give effect to the recommendations the of Special Anomaly Committee in case of all the 13 Respondents in Writ Petition (CT) 21 of 2015 before the Calcutta High Court.

7 I further say that towards implementation of the recommendations of the Special Anomaly Committee, the Petitioner No.2 i.e. the Central Board of Direct Taxes by its letter dated 22.09.2023 directed the Principal Chief Commissioner of Income Tax (CCA), Kolkata to give effect to the decision of the aforestated decision of the Government with regard to fixation of pay and payment of arrears in terms of the recommendations of the Special Anomaly Committee. A copy of letter dated 22.09.2023 is annexed hereto and marked as Exhibit-C.

8. I further say that the Special Anomaly Committee has in its recommendations admitted that there is an anomaly in the date of effectiveness for grant of

> *enhanced pay scales of Rs. 6500-10500 in case of Inspector of Income Tax and Rs. 7500-12000 in the case of Income Tax Officers. The committee has also specifically appreciated that in some of the cases, the enhanced pay scale was granted w.e.f. 01.01.1996, while in the case of Income Tax Officers and Inspectors of Income Tax, it was granted w.e.f. 21.04.2004. In the light of the aforestated recommendations made by the Special Anomaly Committee which are applicable to the entire cadre of Inspector of Income Tax and Income Tax Officer, nothing remains in the present Writ Petition. Once the Government of India has accepted the recommendations of the Special Anomaly Committee in the cases of the 13 similarly placed individuals in Kolkata Charge, the same relief should be extended in the case of the present Respondent as well ."*

11. After the additional affidavit filed was as above, time was granted to the Petitioner. The learned counsel for the Petitioner-Union of India to take instructions and after taking the instructions Petitioner has filed an Additional Affidavit through the Deputy Commissioner of Income Tax wherein it is stated as under:

> *2.3 It is also pertinent to mention with regard to the averment made in the Additional Affidavit that 13 ITOs of Kolkata region have also filed an O.A. 397/2009 before Hon'ble CAT, Kolkata Bench, seeking the same relief with regard to effectiveness of date of revision of pay. The O.A. was allowed based on the order of Hon'ble CAT, Mumbai Bench in O.A. 86/2008. Aggrieved by the order the UOI filed WP 21/2015 before Hon'ble High Court of Calcutta and the Hon'ble High Court of Calcutta vide its order dated 03.05.2023 has directed as under:*

> *" We, therefore, direct that the UOI shall constitute a Special Anomaly Committee within two months from date of communication of this order who shall decide the representation made by respondents annexed to the Writ Petition from page 70 onwards within a month from date of constitution of the committee and shall communicate the decision within a week therefrom to the respective respondents."*
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> *2.4 Following the direction of the Hon'ble High Court of Calcutta, the committee has been constituted and the decision of the committee has been communicated to the respondents with approval of the Finance Minister."*

12. Therefore, the subsequent events are that Original Application No.397/2009 which was filed before the Central Administrative Tribunal, Calcutta Bench for similar relief in respect of the granting date on 21 April 2004. The Tribunal at Calcutta allowed the Original Application based on the impugned order passed on this Original Application. The order passed by the Calcutta Bench of the Tribunal was challenged by the Union of India before the Calcutta High Court and the Calcutta High Court had directed that a Special Anomaly Committee be formed. It is not placed on record that the order passed by the Calcutta High Court was challenged either by the Union of India or any of the employees or the Association.

13. That being the position we have to take note of the order

passed by the Calcutta High Court in proceedings in which the order was passed by the Tribunal based on the very impugned order before us and therefore, we would take the same view as taken by the Calcutta High Court that is referring a matter to Special Anomaly Committee. Now reference to the Special Anomaly Committee would not be necessary because pursuant to the order passed by the Calcutta High Court, the Special Anomaly Committee was constituted and has submitted its report and made recommendations. After the recommendations were received from the Special Anomaly Committee through the Competent Authority, they have been accepted by the Government of India and these recommendations have been extended to the Respondents before the Calcutta High Court.

14. The Respondent Association has also placed on record that thereafter Central Board of Direct Taxes, by order dated 22 September 2023, has directed the Principal Chief Commissioner of the Income Tax Department, Calcutta to give effect to the decision of the Government in terms of recommendation of Special Anomaly Committee. This above position is not disputed before us.

15. Therefore, what emerges is that while this Writ Petition was pending considering the challenge to the order passed by the Central Administrative Tribunal in Original Application

No.86/2008, this impugned order was relied upon by the Central Administrative Tribunal Calcutta, in which the Calcutta High Court directed the Special Anomaly Committee to be appointed whose report has been accepted by the Government and benefit has been given to the Original Applicants who had approached the Tribunal at Calcutta. Nothing is shown to us even in the reply as to why a similar course of action should not be adopted in the case of the Respondents herein. Even in oral arguments on behalf of the Petitioners distinguishing features have not been pointed out.

16. In the light of the abovementioned facts, the appropriate course of action is to dispose of this Writ Petition directing the Petitioner to adopt the same course of action as has been done in respect of the Original Applicants who had approached Calcutta Bench of the Tribunal that is acceptance of the report of the Special Anomaly Committee and subsequent orders giving effect thereto.

17. Accordingly the impugned order passed by the Central Administrative Tribunal dated 17 January 2012 in Original Application No.86/2008 stands substituted/modified Petitioner will give the benefits as has been given to the Applicants before the Tribunal in Calcutta in Original Application No.397/2009 in Writ Petition No. (CT)21/2015.

18. Considering that this Writ Petition remained pending and the Applicants before the Calcutta Bench of Tribunal who had relied upon impugned order in this Petition have been granted relief earlier than the present Petitioners, the necessary action be taken by the Petitioners as early as possible, preferably within three months from today subject to procedural requirements.

19. Rule is disposed of in the above terms.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)